

II.

The Ninth Circuit has made clear that habeas jurisdiction is absent, and a § 1983 action proper, where, as here, a successful challenge will not necessarily shorten the prisoner's sentence. See Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003). It would be different if the disciplinary finding had resulted in the forfeiture of time credits because a successful challenge would result in the restoration of the time credits and thereby necessarily shorten Harvey's sentence. The effect of the disciplinary finding on Harvey's possible release on parole is too attenuated to compel a different result. Cf. Burnsworth v. Gunderson, 179 F.3d 771, 774 n.3 (9th Cir. 1999) (possibility that prisoner having conviction/disciplinary finding on record may result in denial of parole eligibility at some later date too attenuated to amount to denial of a protected liberty interest).

III.

For the foregoing reasons, the petition for a writ of habeas corpus is DISMISSED without prejudice to filing a civil rights complaint under 42 U.S.C. § 1983. The clerk is instructed to enter judgment in accordance with this order and close the file.

SO ORDERED.

DATED: July 22, 2008



CHARLES R. BREYER
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

QUILLIE L. HARVEY,
Plaintiff,

Case Number: CV08-02491 CRB

CERTIFICATE OF SERVICE

v.

M.S. EVANS et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 22, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Quillie L. Harvey H-28106
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960

Dated: July 22, 2008

Richard W. Wieking, Clerk
By: Barbara Espinoza, Deputy Clerk